

Legal Protection of Workers Who Have Termination of Employment at Pt Jiwa Tekno Kultura



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ABSTRACT: The outbreak of the Covid 19 throughout the world, it resulted in paralyzed economies in the world, one of which is Indonesia. There have been mass layoffs and many company closures due to a drastic decline in company turnover. In the end, the company is forced to terminate the employment relationship with the worker, as a consequence, the company is required to pay layoff compensation in accordance with the provisions of the law. Payment of layoff compensation in large numbers is difficult to fulfill directly by employers considering the company's financial condition went bankrupt due to continuous losses, this study uses a descriptive qualitative method by describing the condition of the company through interviews with former workers, by explaining and answering using theories to make a conclusion. The way that can be done for workers to get their rights is to use the bankruptcy mechanism by means of which former employees submit bankruptcy applications to the commercial court with the aim that the directors are responsible for the rights of the former workers.

KEYWORDS: Bankruptcy, Termination of Employment, Compensation, Commercial Court

A. BACKGROUND

In the era after the outbreak of the Covid-19 pandemic hit the world, the impact of the pandemic is still being felt, especially in the corporate sphere. Based on the results of a survey by the Ministry of Manpower, around 88 percent of companies affected by the pandemic from April 2020 to November 2020 range were generally in a state of loss. It was even explained that 9 out of 10 companies in Indonesia were directly affected by the Covid 19 pandemic.¹ Based on the results of a survey conducted by the Ministry of Manpower in collaboration with the Institute for Development of Economics and Finance (INDEF), a decrease in demand, production and profits generally occurs in MSME companies, which is around 90 percent. The companies that were heavily affected were the provision of food and beverage accommodations, real estate, and construction.

The decrease in the number of profits and also the decrease in the amount of purchasing power, impacted the closing of branches, closing of shops, and even to the point where many companies went bankrupt. Data from the Indonesian Retail Entrepreneurs Association (Aprindo) shows, until March 2021, nearly 1,300 retail shops were closed due to the pandemic.²

In 2023, it turns out that the impact of the Covid 19 pandemic is still being felt. In 2023, Indonesia is threatened by inflation, and a global recession is expected to come in 2023, in this case, it is very possible for companies, especially startups, to take preparatory steps so as to increase efficiency.³

The reason for this efficiency will certainly have an impact on the number of unemployed in Indonesia, based on the Central Bureau of Statistics, the Open Unemployment Rate (TPT) for February 2023 is 5.45 percent and there are 3.60 million people or 1.70 percent of the working age population affected by Covid 19.⁴

This efficiency effort is one of the steps taken by the company due to losses that occur continuously in a certain period which in the end have an impact on workers with the issuance of a decision by the company to lay off workers because the company stops producing or the company closes as a consequence, the company is required to make compensation payments to workers affected by layoffs due to reasons the company loses continuously. However, this compensation payment becomes a complicated issue to be

¹ Dikutip dari <https://kemnaker.go.id/news/detail/survei-kemnaker-88-persen-perusahaan-terdampak-pandemi-covid-19>, diakses pada tanggal 30 mei 2023 pukul 17.45

² Dikutip dari <https://indonesiabaik.id/videografis/dampak-pandemi-1300-gerai-ritel-tutup> diakses pada tanggal 30 mei 2023 pukul 17.54.

³ Dikutip dari <https://bisnis.tempo.co/read/1689899/terbaru-23-daftar-startup-indonesia-yang-phk-massal-hingga-2023> diakses pada tanggal 30 mei 2023 pukul 17.59

⁴ Dikutip dari <https://www.bps.go.id/pressrelease/2023/05/05/2001/februari-2023--tingkat-pengangguran-terbuka--tpt--sebesar-5-45-persen-dan-rata-rata-upah-buruh-sebesar-2-94-juta-rupiah-per-bulan.html> diakses pada tanggal 30 mei 2023 pukul 18.07

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solved immediately, especially if the condition of the company experiences continuous losses and is no longer able to carry out production activities.

One of the companies that have experienced the impact of Covid 19 is PT Jiwa Tekno Kultura (JTK), which is a company engaged in the Food and Beverage sector whose product is commonly known as Soul in the Box. Until the end of 2022, the company will close outlets both at the head and branches. closed all franchises and laid off employees

In the event of closing its outlets, PT JTK terminated employment with employees without paying severance pay on the grounds that the company did not have any assets to sell and to pay severance pay for employees who were affected by the termination on the grounds that the company was losing money.

Based on this, the author's interest is to explore the case to find a win-win solution or the best solution to save the company so that it can be productive again, as well as provide solutions to former workers who have been laid off to obtain a quick termination of layoffs, according to legal procedures. that takes place and doesn't take long.

B. RESEARCH MATERIALS AND METHODS

In this study, qualitative research methods were used, according to Creswell (1998) that qualitative research as a complex description examines words, detailed reports, and respondents' views, and conducts studies in natural situations. the focus of the research is in accordance with the facts in the field, in this study the researcher departs from the data, utilizes existing theories as explanatory material, and ends with a theory.⁵

This research is descriptive in nature, meaning that in writing a qualitative research report it contains citations of data (facts) disclosed in the field to provide support for what is presented in the report.⁶ Data collection is carried out by taking interview data with employees who have experienced layoffs at the company, processing it in a normative juridical manner, and using Prescriptive Analytics analysis, which is a type of analysis that is useful in decision-making processes based on information analysis from raw data, meaning that this prescriptive analysis will analyze data and provide advice on the best course of action that employees and the Company should take in certain scenarios. The objective is to find the best solution or step that will benefit both the Employee and the Company based on the analysis.⁷

Therefore the researchers discussed a sample of cases at the company PT Jiwa Tekno Kultura in order to provide advice on the best course of action for both parties, for employers and for workers or to provide knowledge to the general public.

C. RESULTS AND DISCUSSION

1. Research results obtained by researchers in the form of information from interviews with former employees of PT Jiwa Tekno Kultura who have been laid off and the facts that occurred are as follows:

PT Jiwa Tekno Kultura is a catering service provider company with the trademark Soul in a Box which provides services for personal, office, and events located in South Jakarta. Soul in a Box has started operating since 2017, Soul in a Box has an MUI halal certificate, ISO 22000: 2018 Certificate, and a Health Worthy Certificate. It has a head office on Jl. Cipete Raya No. 11B Ex. South Cipete, Kec. Cilandak, South Jakarta. Until the end of 2022, there are 28 employees stationed at the head office. However, in mid-2022, the company experienced continuous losses, so the company sold all of the company's assets. Under these conditions, the company only pays the employee's last salary in October 2022.

The losses suffered by the company were due to financial mismanagement. The entrepreneur did not make any effort to save his company from losses, this was in accordance with the knowledge of the interviewees, there was no innovation from the company to be able to overcome these losses, and also the reasons investors did not want to increase the amount of their investment in the company. The large employee salary burden coupled with other costs such as the company's debt to suppliers, and sales of invoices with third parties using interest, is of course very burdensome for the company, so in the end it makes the decision to lay off all employees / lay off its employees without giving layoff compensation money for the sake of reduce costs.

Discussing bankruptcy in a company is a condition in which a company experiences huge losses which causes the company to go out of business.⁸ Bankrupt companies are characterized by managerial and operational indicators. The law does not explain

⁵ Juliansyah Noor, *metodologi Penelitian Skripsi, Tesis, Desertasi dan Karta Ilmiah*, Jakarta, Kencana Edisi Pertama, 2017, hlm 34

⁶ Albi Anggito, Johan Setiawan, *Metodologi Penelitian Kualitatif*, Kab. Suabumi, CV Jejak, Cetakan Pertama, 2017, hlm 34

⁷ Handy Firmansyah, Siti Hajati Hoesin, *Analisis Hukum Pembayaran Kompensasi PHK Pada Perusahaan Yang Mengalami Kerugian Di Masa Pandemi Covid – 19*, Fakultas Hukum Universitas Indonesia, Volume 08 Nomor 1, hlm.654

⁸ Dikutip melalui situs <https://www.hukumonline.com/berita/a/perbedaan-pailit-dan-bangkrut-lt62bc216145909/?page=1> diakses pada tanggal 5 Juni 2023 pukul 15.25

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the definition of bankruptcy itself, but in the constitutional court session on case no. 18/PUU-VI/2008 there are two factors that cause bankruptcy, namely external factors and the existence of miss management:⁹

- a. **External Factors**, outside the authority of the entrepreneur, such as the Covid-19 pandemic which caused a halt in the delivery of raw materials, decreased sales due to the many shops closing early, and so on.
- b. **The existence of miss management**, such as the occurrence of poor use of finances carried out by finance, as well as poor financial management carried out by company directors.

Bankruptcy and bankruptcy are often interpreted the same way, but actually, these two things have different differences, according to the Big Indonesian Dictionary, bankruptcy is a situation where a person or legal entity is no longer able to pay its obligations (in terms of debts) to the debtor.¹⁰

The definition of debt according to Jerry Hoff in a book entitled "Indonesian Bankruptcy Law", which was later translated into Indonesian by Kartini Muljadi explained that,¹¹ Obligations or debts can arise from an agreement or because of a law, where there is an obligation to give something and the creditor is entitled to the implementation of obligations by the debtor and the debtor is required to carry out his obligations. Thus, Jerry Hoff draws the same definition of debt as contained in the foundation of the bankruptcy law, namely the Civil Code, namely debt that arises either because of an agreement or because of a law. In this case, the definition of debt in a broad sense is drawn.

Meanwhile, in the case of PT Jiwa Tekno Kultura, 28 employees were terminated as a result of continuous losses at the company. In fact, companies do not give their rights which are already regulated in the applicable law, namely Article 15 Jo. 16 and Joe. 17 Government Regulation No. 35 of 2021. Contract workers or PKWT are entitled to compensation of 1 (one) month's wages with a minimum of 1 (one) month of continuous work and the job is terminated due to termination by one of the parties (the company) is entitled to receive compensation with the mechanism for granting the amount of compensation regulated in Article 16¹² Likewise, permanent workers or PKWTT are entitled to layoff compensation money consisting of severance pay, gratuity pay, compensation money that should be received by the worker concerned including annual leave, fees or return from work, etc. specified in the work agreement.¹³

In carrying out the process of the relationship between the company and workers, the company will certainly enter into an agreement bond, this bond is something that is based on the Employment Agreement. The employment agreement is a basis for the relationship between workers and employees so without an employment agreement there will be no employment relationship.¹⁴ According to Law Number 13 of 2003 concerning Manpower Article 1 point 14 states that a Work Agreement is an agreement entered into by workers and employers where there are working conditions, rights, and obligations of each Party. According to Hugh Collins, work agreements prevent employers from abusing the workforce they employ. In addition, the Employment Agreement occurs where the worker binds himself to work by obtaining a salary from the employing party.¹⁵

Apart from salary, the rights that arise for workers in work agreements are rights to benefits and other rights that are obligatory to the company. When a company goes bankrupt, which results in the company being unable to carry out company operations, this also has an impact on Termination of Employment or Layoffs, then the company has the responsibility to fulfill workers' rights as described in the Labor Law.¹⁶

Workers who experience layoffs as a result of a bankrupt or bankrupt company will get their rights in accordance with Article 95 of Law No. 13 of 2003 concerning Manpower as amended by Law No. 6 of 2023 concerning Stipulation of Government Regulations in Lieu of Law No. 2 of 2022 concerning Job Creation which reads:

- (1). In the event that a company is declared bankrupt or liquidated under the provisions of laws and regulations, wages and other rights that have not been received by workers/laborers are debts that are prioritized for payment.
- (2). Work/Labor wages as referred to in paragraph (1) are prioritized for payment before payment to all creditors.
- (3). Other rights of Pakaeja/Labor as referred to in paragraph (1) are prioritized for payment to all creditors except for creditors holding material guarantee rights.

⁹ *Ibid*

¹⁰ Dikutip dari situs <https://kbbi.kemdikbud.go.id/entri/kepailitan> diakses pada tanggal 5 Juni 2023 pukul 16.17

¹¹ Jerry Hoff, "*Undang-Undang Kepailitan di Indonesia*" (penerjemah Kartini Mulyadi, PT Tata Nusa, Jakarta 2000 hlm 18.

¹² Peraturan Pemerintah No.35 Tahun 2021 tentang Perjanjian Kerja Waktu Tertentu, Alih Daya, Waktu Kerja, Waktu Istirahat, dan Pemutusan Hubungan Kerja

¹³ Undang-Undang No.6 tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja, pada bunyi pasal 156 jo. 157.

¹⁴ Dimas Hanif Alfarizi "*Tanggung Jawab Perseroan Terbatas Terhadap Karyawan Sebagai Kreditur Preferen Dalam Kepailitan*", Vol. 5 No.6, 2016, Jurnal UNDIP, Semarang Hlm. 3

¹⁵ Lalu Husni, *Pengantar Hukum Ketenagakerja*, RajaGrafindo Persada, Jakarta, 2016, hlm 62

¹⁶ Ni Putu Diah ANjeni Werdhi Wahari, *Kedudukan Hak Pekerja Ketika Perusahaan Dinyatakan Pailit*, Program Kekhususan Hukum Bisnis Fakultas Hukum Universitas Udayana, hlm.7

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Mention in Parties in bankruptcy, namely the terms Debtor and Creditor. This is in Law no. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations in Article 1 paragraph (2) and Paragraph (3)

Article 1 paragraph (2)

Creditors are people who have receivables due to agreements or laws that can be collected in court

Article 1, paragraph 3)

Debtors are people who have debts due to agreements or laws whose repayment can be billed before the court.

From the explanation above, it can be concluded that there are differences in the types of creditors, namely Concurrent Creditors, Preferred Creditors, and Separatist Creditors.

a. Concurrent Creditor (Unsecured Creditor)

The definition of concurrent creditors is explained in Article 1132 of the Civil Code. Who explained that:

“These goods become joint guarantees for all creditors against them; the proceeds from the sale of the goods are divided according to the ratio of the respective receivables unless there are valid reasons among the creditors to take precedence.

Concurrent creditors are creditors with *paripassu* and *pro-rata* rights. This means that the creditors jointly obtain repayment (without any precedence) which is calculated based on the amount of each receivable compared to their overall receivables to the entire assets of the company.¹⁷ These creditors have the same position. The distribution is calculated on the basis of the amount of each individual's receivables compared to their overall receivables, towards the entire company's assets.

So in essence, concurrent creditors are creditors who do not hold collateral rights, but these creditors have the right to collect debtors based on agreements. However, in the most recent settlement after the preferred creditor and separatist creditor paid off their receivables.

b. Preferred Creditor

Preferred creditors are creditors who by law, solely because of the nature of their receivables, get repayment in advance, preferred creditors are creditors who have special rights, namely a right that is given by law to a creditor so that the level is higher than the creditor. others, solely based on the nature of the receivables, these privileges are listed in Article 1134 of the Civil Code.

"Privilege is a right granted by law to a creditor which causes him to have a higher position than others solely based on the nature of the receivable.

c. Separatist Creditors

Separatist creditors, namely creditors holding mortgage rights and liens, can act independently. This class of creditors can sell the collateral as if there had been no bankruptcy.¹⁸ From the proceeds of the sale, they take the number of their receivables, whereas if there are any leftovers from the execution, they will be deposited into the Curator's treasury as a bankrupt model. On the other hand, if the proceeds from the sale are found to be insufficient, then the said creditor, for unpaid bills, can enter the shortfall as a competing (concurrent) creditor.

As for the responsibility of the directors, if the directors declare that the company is bankrupt, while there are still obligations for the company to settle its obligations to workers' rights, if in carrying out its obligations to employees, the directors can make efforts to apply for Suspension of Debt Payment Obligations (PKPU).

The definition of Postponement of Debt Payment Obligations or PKPU is the provision of opportunities for debtors to restructure their debts to creditors, if interpreted systematically about PKPU (Surcen van detailing or suspension of payment) is a period of time provided by Law Number 37 of 2004 to the debtor and creditor based on the decision of the Judge of the Commercial Court to deliberate in order to reach peace in the form regarding the method and time of payment of the debtor's debt to the creditor in the whole or part of the debtor's debt.¹⁹

This PKPU effort can only be carried out by the debtor before the bankruptcy statement decision is stipulated by the Court²⁰ Article 229 paragraph (3) of Law 37 of 2004 states that if the application for a declaration of bankruptcy and a request for postponement of debt payments are examined simultaneously, then the application for PKPU must be decided first.

2. Steps that can be taken by employees of PT Jiwa Tekno Kultura in fighting for their rights.

Based on the theory of labor law, there are 3 (three) types of protection for workers/workers, namely social protection, economic protection, and technical protection. To discuss the payment of layoff compensation money, the appropriate theory is that former workers/laborers have the right to receive economic protection.²¹ This protection concerns the payment of layoff compensation money for the survival of former workers. However, when explained by the source, the company no longer has assets that can be sold. On that basis, the authors provide a solution through bankruptcy.

¹⁷ Yuhelson, *Hukum Kepailitan di Indonesia*, Ideas Publishing, Gorontalo, 2019, hlm.47

¹⁸ *ibid*

¹⁹ *Opcit* Jerry Hoff hlm. 152

²⁰ *Ibid.*

²¹ Aloysius Uwiyono, dkk, *Asas-Asas Hukum Ketenagakerjaan*, Jakarta, Rajawali Press, 2014 hlm. 25-26.

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In providing an analysis so that the problem of payment of layoffs does not go through the bankruptcy channel, it can also be done through a bipartite mechanism. Apart from going through a bipartite mechanism, it can also be through a bankruptcy mechanism. In the bankruptcy mechanism, because the wages of workers have been paid, what will be requested by the employer are rights that have not been granted by the company. This is regulated in Article 95 of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in lieu of Law Number 2 of 2022 concerning Job Creation to become Law.

- (1) In the event that a company is declared bankrupt or liquidated based on the provisions of laws and regulations, wages and other rights that have not been received by the Worker/Labourer are debts that are prioritized for payment.
- (2) Workers'/laborers' wages as referred to in paragraph (1) are prioritized for payment before payment to all creditors.
- (3) Other rights of workers/laborers as referred to in paragraph (1) are prioritized for payment of all creditors except for creditors holding material guarantee rights.

D. CONCLUSIONS AND RECOMMENDATIONS

Legal certainty in the payment of layoff compensation is something former workers/laborers who have been laid off really want. Employers are required to pay layoff compensation money immediately so that workers' rights can be granted in accordance with human values and statutory regulations. According to the law, layoff compensation money should be given according to a predetermined amount, but in the event that an entrepreneur is in a bad financial condition due to continuous losses, the payment can be made in the form of a bipartite settlement mechanism by prioritizing negotiations between the two parties, so that reach a win-win solution.

The bipartite agreement that has been agreed upon also does not provide a sense of security for workers to receive compensation payments quickly. In practice, employers tend to break their promises to keep the collective agreements that have been made and registered, meanwhile, workers can only complain about the matter to the local Manpower Office and then follow the legal route of the industrial relations court. The agreement through collective agreement only directs the payment of layoff compensation money to funds/cash or cash owned by the company, which is a small amount, considering that the company has been losing continuously and has sold all of its assets, then the payment will not be enough to pay all the compensation money. Layoffs of former workers. Efforts to achieve legal certainty in the payment of layoff compensation money are within the scope of bankruptcy law, where ex-employees can apply for bankruptcy through a commercial court. Bearing in mind that in the event that an entrepreneur or director does not run his business in accordance with the principles of GCG (Good Corporate Governance), then the responsibility for debts that are the responsibility of the company can be insured up to the personal assets of the directors.

The advantage of this effort is that the payment of compensation money for layoffs for former workers is guaranteed by law to be paid according to the loss suffered by the company due to the negligence of the directors, causing losses that caused the employee to be laid off massively. However, if the business fails, then the entrepreneur can submit a Postponement of Debt Payment Obligations (PKPU) to the commercial court and request a debt restructuring. The weakness of the solution presented by the author is that the time spent on the process is relatively longer, due to the condition of the entrepreneur who must seek capital in advance to pay the employee's wages, in the end, the worker must return to the buying route from mediation to litigation in the commercial court and waiting for the judge's decision which has permanent legal force.

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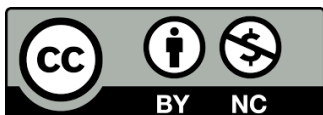
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